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Access Petition for in re application  
Bernward Scholkens et al.  
Application No. 09/645,556  
Filed: August 25, 2000  
Attorney Docket No. N/A

DECISION DISMISSING  
PETITION UNDER  
37 CFR §1.14

This is a decision on the November 8, 2004, "Petition for Access to U.S. Application Under 37 CFR 1.14" requesting access to US Application USSN 09/645,556.

The petition is before the Office of Patent Legal Administration of the United States Patent and Trademark Office.

The petition is **dismissed as moot**.

### BACKGROUND

US Patent Application No. 09/645,556 filed by Bernward Scholkens et al. (the '556 application) went abandoned on May 17, 2006. The '556 application was not published.

On May 2, 2006, US Patent Application No. 11/415,137 was filed by Bernward Scholkens et al (The '137 application) claiming benefit as a continuation application to the '556 application. The '137 application was published on August 31, 2006 as US Publication No. 2006/0194868 A1.

The relevant sub paragraphs of Rule 37 CFR 1.14(a)(1) are as follows:

(iv) *Unpublished abandoned applications (including provisional applications) that are identified or relied upon.* The file contents of an unpublished, abandoned application may be made available to the public if the application is identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, or an international patent application publication of an international application that was published in accordance with PCT Article § 21.(2). An application is considered to have been identified in a document, such as a patent, when the application number or serial number and filing date, first named inventor, title and filing date or other application specific information are provided in the text of the patent, but not when the same identification is made in a paper in the file contents of the patent and is not included in the printed patent. Also, the file contents may be made available to the public, upon a written request, if benefit of the abandoned application is claimed under 35 U.S.C. § 119(e), 120,

121 or 365 in an application that has issued as a U.S. patent, or has published as a statutory invention registration, a U.S. patent application publication, or an international patent application that was published in accordance with PCT Article § 21(2). A copy of the application-as-filed, the file contents of the application, or a specific document in the file of the application may be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)).

(vii) *When a petition for access or a power to inspect is required.* Applications that were not published or patented, that are not the subject of a benefit claim under 35 U.S.C. §119(e), 120, 121 or 365 in an application that has issued as a U.S. patent, an application that has published as a statutory invention registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article § 21(2), or are not identified in a U.S. patent, a statutory invention registration, a U.S. patent application publication, or an international patent application that was published in accordance with PCT Article §21(2), are not available to the public. If an application is identified in the file contents of another application, but not the published patent application or patent itself, a granted petition for access (see paragraph (h)) or a power to inspect (see paragraph (c)) is necessary to obtain the application, or a copy of the application.

## DECISION

Petitioner filed a petition under 37 CFR 1.14(a)(1)(vii) requesting access to the '556 application. At the time of filing the petition the '556 application was pending and identified in another application that was open to the public.

The '556 application is now abandoned. However, application '137 was filed on May 2, 2006. The '137 application claims benefit of priority to the '556 application. The '137 application published as US Patent Application Publication No. 2006/0194868 A1. The '556 application is specifically identified on the face of the publication stipulated in 37 CFR 1.14(a)(1) to trigger public availability without the need to petition. Therefore, the '556 application is available to the public, rendering the need for a petition for access moot.

In view of the above, US Patent Application No. 09/645,556 is now accessible to the public under the procedures set forth in MPEP 1730E. Therefore, the petition is **dismissed as moot**.

## CONCLUSION

1. The petition under 37 CFR 1.14, for access to US Patent Application No. 09/645,556 is **dismissed as moot**.

2. Telephone inquiries with regard to this decision should be directed to Joseph F. Weiss, Jr., Legal Advisor, Office of Patent Legal Administration, at (571) 272-7759.

A handwritten signature in black ink, appearing to read 'H. Bernstein', written over a horizontal line.

Hiram H. Bernstein  
Senior Legal Advisor  
Office of Patent Legal Administration  
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